CONTENTS

	Page	
I. Summary	2	1/A6
II. Explanation of the Bill	4	1/A8
A. Excise tax treatment of domestic wines for certain uses	4	
B. Refunds for tread rubber excise tax	6	1/A10
C. Exempt status of auxiliaries of certain fraternal beneficiary societies	9	1/A13
D. Extension of withholding to payments of sick pay made by third parties	11	1/B1
E. Annual payment of gift tax	14	1/B4
F. Tax treatment under the Rhode Island Indian Claims Settlement Act	16	1/B6
III. Effect of the Bill on the Budget and Vote of the Committee in Reporting the Bill, as Amended	18	1/B8
IV. Regulatory Impact of the Bill	19	1/B9
V. Changes in Existing Law Made by the Bill, as Reported	19	

Item No. 1008-D
X 96-2:S.Rp. 1033

Calendar No. 1165

96TH CONGRESS
2d Session

SENATE

REPORT
No. 96-1033

TAX ADMINISTRATIVE PROVISIONS REVISIONS

COMPLETED
ORIGINAL

REPORT

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ON

H.R. 5505

NOVEMBER 25 (legislative day, NOVEMBER 20), 1980.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
69-575 O WASHINGTON : 1980

I

22

Blank Page

CONTENTS

	Page
I. Summary	2
II. Explanation of the Bill	4
A. Excise tax treatment of domestic wines for certain uses	4
B. Refunds for tread rubber excise tax	6
C. Exempt status of auxiliaries of certain fraternal beneficiary societies	9
D. Extension of withholding to payments of sick pay made by third parties	11
E. Annual payment of gift tax	14
F. Tax treatment under the Rhode Island Indian Claims Settlement Act	16
III. Effect of the Bill on the Budget and Vote of the Committee in Reporting the Bill, as Amended	18
IV. Regulatory Impact of the Bill	19
V. Changes in Existing Law Made by the Bill, as Reported	19

Calendar No. 1165

96TH CONGRESS, 2d Session } SENATE { REPORT No. 96-1033

TAX ADMINISTRATIVE PROVISIONS REVISIONS

NOVEMBER 25 (legislative day, NOVEMBER 20), 1980.—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 5505]

The Committee on Finance, to which was referred the act (H.R. 5505) to simplify certain provisions of the Internal Revenue Code of 1954, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the act, as amended, do pass.

The amendment is shown in the text of the bill in italic.

House bill.—H.R. 5505, as passed by the House, provided for revisions in certain administrative provisions of the Code and extended certain temporary tax provisions.

Committee bill.—The committee bill deletes the provisions of the House bill already enacted (secs. 2–3 and 12; H.R. 5224, P.L. 96–167); deletes the provision relating to time for payment of the excise tax on fishing equipment and the provision relating to the time in which certain members of the Armed Forces must replace a principal residence; retains the provision relating to the excise tax treatment of domestic wines for certain purposes, retains the provision relating to refunds of tread rubber excise tax (also included in H.R. 3317, as passed by the Senate); retains the provision relating to the exempt status of certain fraternal beneficiary societies, but extends its application to certain other social clubs, such as religious alumni clubs; and adds provisions relating to (1) extension of withholding to payments of sick pay made by third parties (sec. 4 of H.R. 4746, as passed the House), (2) annual payment of the gift tax, and (3) tax treatment under the Rhode Island Indian Claims Settlement Act.

I. SUMMARY

Section 2. Excise Tax Treatment of Domestic Wines for Certain Uses

This section eliminates a distinction between the excise tax treatment of domestic and imported wines so that domestic wines, like imported wines, may be transferred to customs bonded warehouses without payment of tax. In addition, the provision will allow tax-free sales of wines from customs bonded warehouses to foreign embassies, international organizations, and related individuals for authorized purposes, as is allowed distilled spirits under present law. These provisions will become effective for the first calendar month which begins more than 90 days after enactment.

Section 3. Refunds of Tread Rubber Excise Tax

Under present law, a 5-cents-per-pound manufacturers excise tax is imposed on tread rubber used for recapping or retreading tires of the type used on highway vehicles. No credit or refund of the tread rubber tax is available if the tax-paid tread rubber is wasted in the recapping process, contained in a recapped tire the price of which is adjusted under a warranty, or sold in conjunction with certain otherwise tax-exempt sales. In some situations, the tread rubber tax can be avoided by exporting a tire to be recapped outside the United States and then importing the retreaded tire.

This section provides for a refund or credit of the manufacturers excise tax on tread rubber where the rubber is (1) wasted in the recapping process, (2) contained in a recapped tire the price of which is adjusted under a warranty, or (3) sold in conjunction with certain otherwise tax-exempt sales.

The provision also imposes the tread rubber excise tax on the tread rubber in tires which are exported for recapping and subsequently imported into the United States.

Section 4. Exempt Status of Auxiliaries of Certain Fraternal Beneficiary Societies

In order to qualify for tax-exempt status under Code section 501 (c) (7) after October 20, 1976, a social club cannot have any provision providing for discrimination against any person on the basis of race, color, or religion in the club's charter, bylaws, other governing instrument, or any written policy statement.

This section allows social clubs which are affiliated with fraternal beneficiary societies exempt under Code section 501(c)(8), such as those operated by the Knights of Columbus, to retain their exemption even though membership in the clubs is limited to members of a particular religion. In addition, this provision will allow certain alumni clubs which are limited to members of a particular religion to retain their exemption under Code section 501(c)(7).

Section 5. Extension of Withholding to Payments of Sick Pay Made by Third Parties

Under present law, no tax is specifically required to be withheld upon payments of sick pay made to an employee by a person who is not the employer for whom the employee performs services. For example, no tax is withheld from payments of sick pay made on behalf of an employer by an insurance company under an accident or health policy.

In general, this section of the bill provides for voluntary withholding from payments of sick pay made by a third party. In addition, it contains a special provision relating to sick pay paid pursuant to certain collective-bargaining agreements and contains various reporting requirements.

Section 6. Annual Payment of Gift Tax

Under present law, a gift tax return generally is required to be filed, and any gift tax paid, on a calendar quarter basis if the sum of (1) the taxable gifts made during the calendar quarter plus (2) all other taxable gifts made during the calendar year (and for which a return has not yet been required to be filed) exceeds $25,000. However, if all transfers made in a calendar year that are subject to the gift tax filing requirements do not exceed $25,000 in taxable gifts, a return must be filed, and the gift tax paid, by April 15 of the following year.

The bill provides that gift tax returns are to be filed, and any gift tax paid, on an annual basis. The provision is effective with respect to gifts made after December 31, 1981.

Section 7. Tax Treatment Under the Rhode Island Indian Claims Settlement Act

Under present law, the tax status of land received by a corporation created under Rhode Island law to implement a settlement with the Narragansett Indian Tribe is unclear. In addition, present law is unclear with respect to various other aspects related to the Rhode Island Indian Claims Settlement Act.

The bill generally clarifies the tax treatment of transfers under the Rhode Island Indian Settlement Act.

II. EXPLANATION OF THE BILL

A. Excise Tax Treatment of Domestic Wines for Certain Uses (sec. 2 of the bill and sec. 5362 of the Code)

Present law

Under present law, both imported wines and those produced in the United States are generally subject to the same excise taxes (Code sec. 5041). Domestically produced wines may be withdrawn from bonded wine cellars without payment of tax for certain purposes, including exportation, use on certain vessels and aircraft, and further processing in a customs manufacturing warehouse prior to exportation (Code sec. 5362(c)). In addition, domestic wines on which the tax has been paid or determined may be transferred for these purposes and the authorized person may receive repayment of the tax by way of drawback.

Present law allows foreign wines to be imported into the United States and sold tax-free from customs bonded warehouses for uses such as supplies on certain vessels and aircraft and the official or family use, in the United States, of foreign governments, public international organizations, and certain individuals associated with these governments and organizations. In contrast, domestic wines may not be transferred without payment of tax to customs bonded warehouses, other than manufacturing warehouses, and there is no provision which authorizes the tax-free withdrawal of domestic wines from a bonded winery for the use of certain foreign governments and related individuals. While present law permits the tax-free withdrawal from bond of domestically produced ine for the use of certain vessels and aircraft, there is no provision authorizing the tax-free transfer of wine to a customs bonded warehouse for storage pending removal as vessel or aircraft supplies. As a result, it is presently necessary for domestic wines to be exported and then returned to a customs bonded warehouse in the United States in order for sales of these wines to be made without payment of tax to foreign embassies, legations, international organizations, and related individuals, or to accomplish a tax-free transfer of domestic wines to a customs bonded warehouse prior to the authorized withdrawal for use as supplies by certain vessels or aircraft.

The same difference in treatment had previously existed for distilled spirits, which are generally subject to separate taxing provisions. This difference was resolved for distilled spirits under legislation enacted in 1971 [1] and 1977,[2] so that distilled spirits may be transferred, without payment of tax, to customs bonded warehouses located in the United States and held free of tax for exempted sales, such as those to foreign governments and international organizations (and related in-

[1] P.L. 91-659, enacted January 8, 1971.
[2] P.L. 95-176, enacted November 14, 1977.

dividuals) and for certain ship and aircraft supplies. The 1971 amendments also included provisions to prevent the resale or unauthorized use of distilled spirits which are sold tax-free to foreign governments, international organizations, and related individuals (Code sec. 5066).

Reasons for change

The committee believes that domestic wines should be extended the same tax-free treatment (without the requirement of a drawback) for certain sales through customs bonded warehouses as presently applies for distilled spirits and imported wines.

Explanation of provision

The bill will allow the transfer of wine without payment of excise tax to any customs bonded warehouse rather than allowing transfers only to customs manufacturing warehouses, as under present law. In addition, the bill specifies that wine entered into customs bonded warehouses may be withdrawn tax-free for consumption in the United States by and for the use of foreign governments, organizations, and related individuals, and the same prohibitions relating to the resale or unauthorized use of distilled spirits will apply to these transfers of wine. As a result, the same treatment will be accorded wine as is provided for distilled spirits under present law so that domestic wine may be sold tax-free from customs bonded warehouses for qualifying ships and aircraft supplies and for the use of foreign embassies, legations, and related individuals.

Effective date

The provision will be effective on the first day of the first calendar month which begins more than 90 days after enactment.

Revenue effect

It is estimated that the provision will have a negligible effect upon budget receipts.

B. Refunds of Tread Rubber Excise Tax (sec. 3 of the bill and secs. 4071, 6416, and 6511 of the Code)

Present law

Present law imposes a tax of 5 cents per pound on tread rubber used for recapping or retreading tires of the type used on highway vehicles (Code secs. 4071(a)(4), 4072(b), and 4073(c)).[1]

Tread rubber may be sold tax-free for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles, or a credit or refund (without interest) of the tread rubber tax may be obtained if the tax-paid tread rubber is used or sold for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles (Code sec. 6416(b)(2)(G)).

There are several instances under present law where a manufacturers excise tax is imposed on tread rubber when in a similar situation the manufacturers excise tax is not imposed (or a credit or refund of the tax is allowed) on new tires.

First, rubber wasted in manufacturing new tires is not subject to tax since the tax is imposed when the completed tire is sold and only upon the material actually contained in the completed tire. The tax on tread rubber, on the other hand, is imposed before the recapping or retreading of a used tire. Wastage of tread rubber in that process occurs after the tread rubber tax liability has been determined, and under present law no refund or credit is provided for any portion of the tax imposed on tread rubber which is so wasted.[2]

Second, if the sale price of a retreaded tire is adjusted by reason of a warranty or guarantee, no credit or refund of the tread rubber tax is provided.[3]

Third, no credit or refund is available for the tread rubber tax when a recapped or retreaded tire is exported, sold to a State or local government, sold to a nonprofit educational organization, or used or sold for use as supplies for vessels or aircraft (Code secs. 4221 and 6416(b)).

---

[1] The tax on tread rubber is scheduled to expire on October 1, 1984 (Code sec. 4071(d)(3)). (Revenues from this tax go into the Highway Trust Fund.)

[2] In *Great Olympic Tire Co. v. U.S.*, 597 F.2d 449, 78-1 USTC ¶ 16,316 (5th Cir. 1979), the Fifth Circuit Court of Appeals held that tread rubber wasted in the recapping process is not subject to the section 4071(a)(4) manufacturers excise tax, and that highway-type tires returned under warranty after partial use are subject to the tax without allowance for a refund or credit of the tax previously imposed on the tread rubber remaining on the returned tire. In arriving at these conclusions, the court relied upon the fact that wasted rubber never became part of tires of the type used on highway vehicles and that rubber remaining in a returned tire had become part of a tire of the type used on highway vehicles. While the section 4071(a)(4) tread rubber tax does not refer to highway-type vehicle tires, as does the section 4071(a)(1) new tire tax, the court noted that the legislative history of the tread rubber tax clearly evidences an intention to limit the tax to such tires. *See.* H. Rept. No. 10660, 84th Cong., 2d Sess., 1956-2 C.B. 1312; Rev. Rul. 65-223, 1965-2 C.B. 420.

[3] *See* note 2, *supra*.

Neither is the credit or refund available when a retreaded tire is mounted on a new vehicle that then is disposed of in any of the above ways.

While used and recapped or retreaded tires ordinarily are subject to the tire tax when imported, a different situation exists when a used tire which has been taxed in the United States is exported, is retreaded (other than from bead to bead) abroad, and then is shipped back into the United States.[4] Then there is neither a tax on the imported retreaded tire nor on the tread rubber used in the retreading, because the tire already has been taxed and the tread rubber is considered to have lost its identity.

Under present law, the general time by which a claim for credit or refund of a tax must be filed is 3 years from the time the tax return was filed or, if later, 2 years from the time the tax was paid (Code sec. 6511).

Reasons for change

The committee believes that it is appropriate to make the application of the tread rubber tax more nearly equivalent to the application of the new tire tax. Also, the committee concluded that the tax law should not create a competitive advantage for tires which are exported for retreading and then imported for sale in the United States.

Explanation of provision

Credit or refund of tread rubber tax

This provision of the bill makes a credit or refund of the tread rubber tax available in three situations. These changes are intended to permit a credit or refund of the tax on the tread rubber used in a recapped or retreaded tire, under the same circumstances where similar treatment would be available for the tax on a new tire.

First, the credit or refund would be available where rubber is destroyed, scrapped, wasted, or rendered useless in the recapping or retreading process.

Second, the credit or refund would be available where the tread rubber is used in the recapping or retreading of a tire if the sales price of the tire is later adjusted because of a warranty or guaranty. The overpayment (that is, the amount available for credit or refund) would be the same proportion of the tax paid as the adjustment in the sales price of the retreaded tire to the immediate vendee by the tire retreader.

Third, a credit or refund of the tread rubber tax would be available to the manufacturer for the tread rubber on a recapped or retreaded tire if the tire is by any person (1) exported, (2) sold to a State or local government for its exclusive use, (3) sold to a nonprofit educational organization for its exclusive use, or (4) used or sold for use as supplies for a vessel or aircraft.

Finally, where a retreaded tire is sold by the retreader or by another manufacturer on or in conjunction with another article (for example, a truck) manufactured by it, the bill provides that a credit or refund of the tread rubber tax is to be allowed to the manufacturer of

---

[4] Tires recapped from bead to bead are considered as having been newly manufactured and thus are taxable.

the other article if the article is exported or sold by any person for any of the above purposes.

Tax on imported recapped or retreaded tires

The bill also provides that used tires which are exported from the United States, recapped or retreaded abroad (other than from bead to bead), and then imported into the United States are to be subject to the tax on tread rubber. For this purpose, the amount of tread rubber to be taken into account is to be determined as of the completion of the recapping or retreading of the tire. The amount so determined would be either the amount which is established as actually used in recapping or retreading the tire or an average amount which is generally used on comparable tires in the industry, as determined by the Treasury Depa.tment (Code sec. 4701)c)).

If a retreaded tire is imported on a vehicle which is not itself subject to a manufacturers excise tax (e.g., a passenger car or a light-duty truck), then the importer of the vehicle is under existing law (Code sec. 4071(e)) treated as the importer of the tire. However, as noted, if the tire is not taxable because it was exported and recapped abroad (except from bead to bead), the importer is not liable for tax on the tread rubber on the imported tire. This provision carries the process a step further and would treat the importer of the vehicle as the importer of the tread rubber that is on a retreaded tire which is not otherwise subject to tax on the complete tire.

Warranty or guarantee adjustments

The provision also modifies the statute of limitations in cases where a claim for credit or refund of the tread rubber tax is filed as a result of a warranty or guarantee adjustment. The amendment provides that in such a case a claim for credit or refund may be filed at any time before the date which is one year after the date on which the adjustment is made, if the period for filing the claim would otherwise expire before that later date.

In other words, under this provision, the manufacturer would be assured that it will have one day less than a year after the time the adjustment is made (or deemed made) within which to file a claim for credit or refund of the relevant tax.

Effective date

The amendments made by this provision will be effective on the first day of the first calendar month which begins more than 10 days after the date of enactment.

Revenue effect

This provision will reduce budget receipts by less than $100,000 in fiscal year 1981, and by less than $200,000 annually during each of the next four fiscal years. (These amounts would otherwise go into the Highway Trust Fund—through September 30, 1984.)

C. Exempt Status of Auxiliaries of Certain Fraternal Beneficiary Societies (sec. 4 of the bill and sec. 501 of the Code)

Present law

Under present law, social clubs and similar nonprofit organizations, such as national organizations of college fraternities and sororities, are exempt organizations. Code section 501(c)(7) provides that these organizations must be organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes with no part of the net earnings inuring to the benefit of any private shareholder.

However, section 501(i) provides that an organization otherwise exempt from income tax as an organization described in section 501(c)(7) is to lose its exempt status for any taxable year, if at any time during that year the organization's charter, by-laws or other governing instrument, or any written policy statement, contains a provision which provides for discrimination against any person on the basis of race, color, or religion.

Exempt status is granted under section 501(c)(8) to fraternal beneficiary societies, orders, or associations which operate under the lodge system or which operate for the exclusive benefit of the members of a fraternity operating under the lodge system, and which provide for the payment of life, sick, accident, or other benefits to the members of the society, order, or association, or their dependents.

Reasons for change

Certain auxiliaries of a fraternal beneficiary society (which is an exempt organization described in section 501(c)(8) and which limits membership to members of a particular religion) are treated by the Internal Revenue Service as exempt social clubs. Certain alumni organizations which limit membership to a particular religion also enjoyed exempt status as social clubs prior to the enactment of section 501(i). The committee believes that these auxiliaries and alumni clubs should not be disqualified from treatment as exempt social clubs by reason of their failure to fulfill the nondiscrimination requirement with respect to religion in section 501(i).

Explanation of provision

This provision allows certain auxiliaries of fraternal beneficiary societies to qualify for tax-exempt status under section 501(c)(7) even though membership in the auxiliaries is limited to members of a particular religion. The bill provides that the restriction on religious discrimination in section 501(i) shall not apply to an auxliary of a fraternal beneficiary society if the society is described in section 501(c)(8), is exempt from income tax under section 501(a), and limits its membership to the members of a particular religion.

The intended beneficiaries of this provision are the affiliated corporations of the unincorporated, subordinate lodges of the Knights of

Columbus, a fraternal society which claims tax-exempt status under section 501(c)(8). Generally, these affiliated corporations were formed to hold title to real property. Prior to the enactment of section 501(i) in 1976, some of the Knights' affiliated corporations have been treated as social clubs described in section 501(c)(7).

In addition, this provision also allows certain alumni clubs to retain their exemption under section 501(c)(7), even though they limit their membership to members of a particular religion. Such clubs will continue to be eligible for exemption provided the religious limitation on membership is designed in good faith, to further the teachings or principles of that religion, and not for the purpose of excluding individuals of a particular race or color. This provision is intended to benefit Catholic Alumni Clubs, but it is not intended to authorize discrimination on the basis of race under the guise of religious affiliation. Nor is it intended to benefit primarily recreational entities such as country clubs where the membership limitation does not, in good faith, further a *bona fide* religious teaching.

Effective date

The provision will apply to taxable years beginning after October 20, 1976, the date on which section 501(i) of the Code became effective

Revenue effect

It is estimated that this provision will have a negligible effect upon budget receipts.

D. Extension of Withholding to Payments of Sick Pay Made by Third Parties (sec. 5 of the bill and secs. 3402 and 6051 of the Code)

Present law

Under present law (Code sec. 105(a)), amounts received by an employee through accident or health insurance for personal injuries or sickness (commonly referred to as wage continuation payments or "sick pay") generally must be included in gross income to the extent such amounts are attributable to contributions by the employer which were not includible in the gross income of the employee, or are paid by the employer.

Under section 3402(a) of the Code, every employer who makes wage payments is required to deduct and withhold income taxes from these payments. Payments made by an employer to an employee under a wage continuation plan generally are treated as wages and subject to withholding (except to the extent that an employee receives back contributions he or she previously made to a wage continuation plan). However, no tax is specifically required to be withheld upon any wage continuation payment made by a person who is not the employer for whom the employee performs services. Thus, for example, no tax is specifically required to be withheld from wage continuation payments made on behalf of the employer by an insurance company under an accident or health policy, by a separate trust under an accident or health plan, or by a State agency from a sickness and disability fund maintained under State law (Treas. Reg. sec. 31.3401(a)–1(b)(8)(ii)(*d*) and Announcement 77–117, 1977–32 IRB 24 (Aug. 8, 1977).)

Reasons for change

Because of the absence of withholding upon wage continuation payments made by third-party payors, employees who have received these payments during the year may experience an unexpected tax liability at the end of the year.[1] The committee believes that voluntary withholding upon such wage continuation payments should be provided so this result can be avoided by the current payment of tax. In addition, the committee believes that availability of withholding for these payments will facilitate compliance by taxpayers.

Explanation of provision

In general

The bill amends section 3402(o) of the Code to specifically require withholding from sick pay, if the payee so requests. For purposes of

[1] Section 3402(o) of the Code authorizes withholding on certain pension and annuity payments if the payee so requests. However, this provision has no application to wage continuation payments made by third-party payors.

this provision, sick pay would be defined as any amount which is paid to an employee pursuant to a plan to which the employer is a party, and which constitutes remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries.

Under the bill, the amount of sick pay and annuity payments subject to withholding would be an amount specified by the payee in his or her request for withholding. However, in no case could this amount be less than a minimum amount to be set forth in regulations prescribed by the Secretary. In the case of a payment which is greater, or less, than a full payment, the amount withheld is to bear the same relation to the specified amount as such payment bears to a full payment.[2]

Requests for withholding

An individual who wishes to have his or her annuity or sick pay subject to withholding must make a written request to the person making the payments. This request must contain the individual's social security number and must specify the amount to be withheld from each full payment. In the case of sick pay, a request for withholding would be effective with respect to payments made more than 7 days after the date on which the request is furnished to the payor. In the case of an annuity, a request would be effective at such time (after the request is made) as the Secretary prescribes by regulations. A request for withholding may be changed or terminated by furnishing to the payor a written statement of change or termination.

Special rule for sick pay paid pursuant to collective-bargaining agreements

Under the bill, in the case of any sick pay paid pursuant to a collective-bargaining agreement between employee representatives and one or more employers, the amount of sick pay subject to withholding would be determined in accordance with such agreement if the agreement so provided. (That is, an employee who is a party to such an agreement would not be required to submit a written request for withholding to the payor.) However, there could be no withholding with respect to sick pay paid to an employee (who is party to a collective-bargaining agreement) who has in effect a withholding exemption certificate certifying that he incurred no tax liability for the preceding taxable year and anticipates that he will incur no tax liability for the current taxable year.

The special treatment accorded to collective-bargaining agreements would not apply to sick pay paid pursuant to such an agreement to any individual unless the individual's social security number is furnished to the payor and the payor is furnished with the information necessary to determine whether the payment is pursuant to the agreement and to determine the amount to be withheld.

---

[2] For example, assume an individual receives sick pay of $100 per week and requests $25 per week to be withheld for taxes. After four full weeks of absence, the individual returns to work on a Wednesday. For the week he returns to work, he would be entitled to $40 of sick pay, $10 of which would be withheld for taxes.

Reporting requirement

The bill would require a person who makes a payment of third-party sick pay to an employee to furnish a written statement to the employer on behalf of whom the payment was made showing the name of the employee, the social security number of the employee (if there was withholding), the total amount of third-party sick pay paid to the employee during the calendar year, and the total amount (if any) withheld from sick pay. This statement would be due on or before January 15 of the year succeeding the year in which the payment of third-party sick pay was made. The bill defines "third-party sick pay" as any sick pay which does not constitute wages for purposes of withholding. This reporting requirement would be in lieu of the reporting requirements of section 6041(a) relating to certain payments of $600 or more. In addition, the bill would provide that a person required to furnish a statement to an employer who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required, would, for each such failure, be subject to a penalty of $50, and, upon conviction of each such offense, could be fined not more than $1,000, or imprisoned not more than one year, or both.

Every employer who receives a statement from a person who made a third-party payment of sick pay to an employee would be required to furnish the information to the employee on another statement which shows which portion (if any) of the sick pay is excludable from gross income and which portion is not excludable. This statement must be furnished to the employee on or before January 31 of the year succeeding the year in which the payment of third-party sick pay was made.

Effective date

This provision of the bill will apply to payments made on or after the first day of the first calendar month beginning more than 120 days after the date of enactment.

Revenue effect

It is estimated that this provision will cause a one-time increase in budget receipts of less than $5 million in fiscal year 1981.

E. Annual Payment of Gift Tax (sec. 6 of the bill and sec. 6019 of the Code)

Present law

Prior to 1971, gift tax returns were required to be filed, and any gift tax liability paid, on an annual basis.[1] For gifts between 1971 and 1976, gift tax returns were required to be filed, and any gift tax liability paid, on a calendar quarter basis. For gifts made after December 31, 1976, a gift tax return is required to be filed, and any gift tax paid, on a quarterly basis if the sum of (1) the taxable gifts made during the calendar quarter plus (2) all other taxable gifts made during the calendar year (and for which a return has not yet been required to be filed) exceeds $25,000.[2] If a gift tax return is required to be filed on a quarterly basis, the gift tax return is due, and any gift tax payable, on or before the 15th day of the second month following the close of the calendar quarter.

If all transfers made in a calendar year that are subject to the gift tax filing requirements do not exceed $25,000 in taxable gifts, a return must be filed, and any gift tax paid, by the filing date for gifts made during the fourth calendar quarter of the calendar year. In 1979 (P.L. 96–167), the due date for an annual return or a return for the fourth calendar quarter was conformed to the due date for filing individual income tax returns, i.e., April 15 of the following year.

Reasons for change

The committee believes that gift tax returns should be filed on an annual basis to reduce compliance problems for and confusion among affected taxpayers and administrative burdens for the Internal Revenue Service.

Explanation of provision

The bill provides that gift tax returns are to be filed, and any gift tax paid on an annual basis. In general, the due date for filing the annual gift tax return will be the 15th day of the fourth month following the close of the calendar year. However, for a calendar year in which the donor dies, the gift tax return for that year is required to be

---

[1] Prior to the enactment of the Excise, Estate and Gift Tax Adjustment Act of 1970 (Public Law 91–614), the due date for filing a gift tax return was April 15 following the calendar year in which a gift was made. In general, the 1970 Act enacted a requirement for the quarterly filing of gift returns (by the 15th day of the second month following the close of the calendar quarter) to provide for the more current payment of gift tax liabilities.

[2] In the case of nonresidents who are not citizens of the United States, the same rule applies except that $12,500 is substituted for $25,000.

filed no later than the due date for filing the donor's estate tax return (including extensions).

These changes will be effective with respect to gifts made after December 31, 1981.

Effective date

The provision applies with respect to gifts made after December 31, 1981.

Revenue effect

It is estimated that the provision will reduce budget receipts by $85 million in fiscal year 1982 and by less than $5 million each fiscal year thereafter.

F. Tax Treatment Under the Rhode Island Indian Claims Settlement Act (sec. 7 of the bill)

Present law

In 1975, the Narragansett Indian Tribe brought suit against the State of Rhode Island and private landowners based on the Tribe's claims to certain land in Charlestown, Rhode Island. The Tribe argued that these lands had been alienated by it in 1880 in violation of the Trade and Intercourse Act of 1790. The Interior Department has held that the Tribe's claim is "credible." Prior to trial, the parties to the suit entered into a settlement agreement which required both State and Federal legislation for its implementation. Pursuant to the settlement and the implementing legislation, the Tribe's land claims have been extinguished. A public corporation (which is not a part of the State government) has been created under Rhode Island law with 5 directors to be appointed by the Tribe and 4 by State and local officials (the "Corporation"). The Corporation is to receive 1,060 acres of land now belonging to the State. Also pursuant to the settlement legislation, a fund of $3.5 million has been established in the U.S. Treasury for the purpose of purchasing 900 acres of privately held land in Charlestown at fair market value from its owners. Recently, 510 acres were acquired for $2.1 million. The land when acquired by the Secretary of the Interior with the proceeds of the fund is to be conveyed to the Corporation.

All land owned by the Corporation is to be held in trust for the benefit of the Tribe. All of the land contributed by the State, and at least 75 percent of the land acquired from private owners, is to be permanently dedicated to conservation purposes. It is anticipated that the Tribe may use the remaining land in other ways which reflect its heritage, or to provide housing for poor or aged members of the Tribe.

The settlement agreement further provided "That the parties to the Lawsuits will support efforts to obtain deferral of both State and Federal income taxes resulting from the conveyance of privately held portions of the Settlement Lands."

The Federal Government's participation in the settlement is under the authority of the Rhode Island Indian Claims Settlement Act, passed in 1978. That law provided for the extinguishment of aboriginal Indian title, creation of the fund for the purchase of the privately held land, and transfer of that land to the Corporation to be formed under the settlement agreement. It did not deal with any of the tax consequences of the settlement.[1]

---

[1] As introduced, H.R. 12860, 95th Congress, contained tax provisions identical to this provision. It is understood that these tax provisions were eliminated from H.R. 12860 to expedite passage in the brief time which remained in the 95th Congress after consideration of the legislation in 1978.

While the Federal Government was not directly involved in drafting the settlement agreement itself, the Administration (through the White House, the Office of Management and Budget, and the Interior Department), the staffs of the House Interior and Insular Affairs Committee, the Senate Indian Affairs Committee, and the staffs of the Rhode Island Congressional delegation took part, along with the parties to the settlement agreement, in drafting the 1978 Settlement Act. Thus, these participants supported, with certain exceptions, the entire agreement of the parties, including the tax provisions.

It is unclear whether, as the facts and circumstances develop, the Corporation could qualify for general exemption from Federal income tax (Code sec. 501). Also, the Corporation's receipt of land in settlement of the Tribe's damage claim might not be subject to income taxation.

Recognition of gain on the sale of property which is involuntarily converted (e.g., sold under the threat or imminence of condemnation) may generally be deferred if the taxpayer, for the purpose of replacing the property, purchases property similar or related in service or use to the converted property. Recognition of gain is limited to the amount by which the amount realized from the conversion exceeds the cost of the replacement property. (Code sec. 1033.) Generally, the replacement must occur within 2 years after the first year in which gain is realized. However, in the case of certain real property held for productive use in a trade or business or for investment, up to 3 years for replacement may be permitted.

Reasons for change

The committee believes that it is desirable to clarify the tax treatment with respect to land received by the Corporation. In addition, the committee believes that under the particular facts, and in the context of the overall settlement, treatment of the sales of the privately held property as an involuntary conversion would be appropriate. However, each disposition of Indian claims under the various lawsuits which have been brought will involve its own unique elements. Accordingly, the committee does not intend that this provision may be looked upon to any extent as a precedent for the appropriate tax treatment of other dispositions of Indian claims.

Explanation of provision

The provision generally provides that the settlement land received by the Corporation shall not be subject to any form of Federal, State, or local taxation while held by the Corporation. Thus, for example, the Corporation would not realize income on receipt of the land and the land would be exempt from local property taxes. (An exemption from local property taxes is also provided in the Rhode Island legislation creating the Corporation.) However, the general exemption rule would not apply to any income-producing activities occurring on the settlement lands, and nothing in the bill would prevent the making of payments in lieu of taxes by the Corporation for services provided in connection with the settlement lands. The provision would not affect the question of whether the Corporation otherwise qualifies for exemption from Federal taxation.

The provision also provides that, for Federal income tax purposes, any sale or disposition of private settlement lands pursuant to the terms and conditions of the settlement agreement is to be treated as an involuntary conversion. This would permit the sellers to defer gain on the sale to the extent allowed by section 1033.

Effective date

The provision will be effective as of September 30, 1978, the date of the enactment of the Rhode Island Indian Claims Settlement Act.

Revenue effect

It is estimated that this provision will decrease budget receipts by less than $500,000 for the period 1980 through 1983.

III. EFFECT OF THE BILL ON THE BUDGET AND VOTE OF THE COMMITTEE IN REPORTING THE BILL AS AMENDED

Budget Effect

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made about the effect on the budget of this bill, H.R. 5505, as amended. The committee estimates that the bill will reduce budget receipts by $3 million in fiscal year 1981, $85 million in fiscal year 1982, and $3 million in fiscal years 1983 through 1985.

The Treasury Department agrees with this statement.

New Budget Authority and Tax Expenditures

In accordance with section 308 of the Budget Act, after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by this bill involve no new budget authority and no new or increased tax expenditures.

Consultation with Congressional Budget Office on Budget Estimates

In accordance with section 403 of the Budget Act, the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as indicated above) and agrees with the methodology used and the resulting revenue estimates.

Vote of the Committee

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made about the vote of the committee on the motion to report the bill, as amended. The bill, H.R. 5505, as amended, was ordered favorably reported by voice vote.

IV. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the regulatory impact that might be incurred in carrying out the provisions of this bill, H.R. 5505, as reported by the committee.

Individuals and businesses regulated and economic impact of regulation.—The bill does not regulate any individuals or businesses, but amends certain provisions of the tax law. The bill simplifies the excise tax treatment of domestic wines used for specified purposes, allows refunds of the tread rubber excise tax in certain instances, allows auxiliaries of certain fraternal beneficiary societies to retain their income tax exemption even though their membership is limited to members of a particular religion, extends voluntary withholding to third-party sick pay, provides that gift tax returns are due annually, and clarifies the tax treatment of transfers incident to the Rhode Island Indian Claims Settlement Act.

Impact on personal privacy.—The provisions of the bill will have minimal impact on personal privacy.

Determination of paperwork involved.—The provisions of the bill will reduce the tax reporting and other paperwork of persons involved in removals of wines from customs bonded warehouses, recapping tires, administering certain fraternal societies, third-party sick pay payments, making gifts, or in procedures incident to the Rhode Island Indian Claims Settlement Act.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, H.R. 5505, as reported by the committee).

O